IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 1619 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SONI TEJASBHAI ASHOKBHAI - Applicant(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MR PS CHAMPANERI for Applicant(s) : 1,
Mr. KT Dave, Addl.PUBLIC PROSECUTOR for Respondent(s) : 1,
None for Respondent(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 23/08/2007
ORAL JUDGMENT

Rule. Shri KT Dave, learned APP waives service of Rule. With the consent of learned advocates appearing for the parties, the matter is taken up for final hearing today.

2. By way of this petition under Article 226 of the Constitution of India the petitioner original-informant has prayed for an appropriate writ or order quashing and setting aside the impugned communication dated 26th March 2007 sent by the respondent No.3 disposing of his application to direct the Police Inspector of Mansa police station to register his complaint as 'FIR'.

3. It is the case on behalf of the petitioner that the petitioner submitted application to the P.I. of Mansa police station stating that he is engaged in the business of goldsmith and is residing at Bhadpur village. It is further submitted that on 1st May 2006 one Baldevbhai M. Prajapati had given him two gold bangles weighing about 2 tolas worth Rs. 10,000 and thereafter for the said two bangless said Baldevbhai M. Prjapati had given Rs. 18,000 on 9th January 2007 on installment. It is further submitted in the said application that when the

said Baldevbhai demanded the said bangles the petitioner had gone to give the said bangles and as the house of Baldevbhai was locked the petitioner had given the said bangles to one Himanshubhai who was having his shop opposite to the shop of the petitioner and told him to give said bangles to Baldevbhai Prajapati and thereafter he left for his home. It is the case on behalf of the petitioner that on way when he met Baldevbhai he informed him that he had given said bangles at the shop of Himanshu and he may collect the said bangles from his shop. It is also the case on behalf of the petitioner that in the said application it is further stated that on 11.1.2007 at about 4 P.M. Himanshubhai had met him and had returned the said bangles saying that Baldevbhai had returned the said bangles as they were not the same which were given by him and therefore the petitioner and Himanshubhai Darji had gone to the house of Baldevbhai Prjapati. It is further the case of petitioner that he informed Baldevbhai that they were not the

bangles which were given by him. It is the case on behalf of the petitioner that as the petitioner was cheated he submitted the said application to the concerned police station at Mansa for taking appropriate action and since no action was taken by the police pursuant to the application filed by the petitioner the petitioner addressed written application to DSP, Gandhinagar by RPAD. In the meantime and/or simultaneously the said Baldevbhai Prajapati also filed one criminal case/complaint against the petitioner being C.R. No. I-11 of 2007 for the offences under Section 406, 420 and 120 of IPC on 16th February 2007. It is the case on behalf of the petitioner that since the petitioner was cheated the petitioner had filed application to the Police Sub-Inspector, Mansa police station for taking appropriate action and even a written complaint was addressed to the DSP, Gandhinagar. However the petitioner was communicated by order dated 27th March 2007 that since the complaint was filed against the present petitioner being C.R.

No. I-11/2006 before the Mansa police station nothing is to be done in the application filed by the present petitioner dated 5.2.2007. Being aggrieved and dissatisfied with the same the petitioner has preferred the present petition for the aforesaid relief.

4. Shri PS Champaneri, learned advocate appearing on behalf of the petitioner has vehemently submitted that the impugned order passed by the respondent No.3 dated 27th March 2007 in not registering and/or directing the P.I. Mansa police station to register his complaint as FIR is absolutely illegal which requires to be quashed and set aside. He has submitted that merely because the said Baldevbhai had filed one complaint against the petitioner being C.R. No. I-11/2006 before the Mansa police station it is no ground not to register the complaint of the petitioner as 'FIR' which could be termed and/or said to be a cross-complaint. Under the circumstances it is requested to quash and set

aside the communication dated 27th March 2007 and direct the P.I. Mansa police station to register the application of the petitioner dated 5.2.2007 as 'FIR'.

5. Shri KT Dave, learned APP appearing for the State is not in position to satisfy this Court with regard to illegality of the impugned communication dated 27th March 2007.

6. Heard the learned advocates appearing for the parties. It appears from the communication dated 27th March 2007 of the respondent No.3 that the respondent No.3 has refused to direct the concerned P.I., to register the application/complaint of the petitioner as FIR solely on the ground that one FIR/complaint being C.R. No. I-11/2006 is filed/registered against the petitioner before the Mansa police station by one Baldevbhai Prajapati. In the facts and circumstances of the case it appears to this Court that merely because some complaint is filed

against the petitioner by a person who might be the complainant in the FIR it is no ground not to register the application of the petitioner as 'FIR'. At the most, the complaint/FIR at the instance of the petitioner against the complainant of C.R. No. I-11/2006 and/or others can be termed and/or said to be the 'cross-complaint'. However on that ground the respondents were not justified in refusing to register the application/complaint as 'FIR'. There is no justification in not registering the application/complaint of the complainant as 'FIR' on the grounds stated in the communication dated 27th March 2007. Under the circumstances, the impugned communication dated 27th March 2007 cannot be sustained and is required to be quashed and set aside.

7. For the reasons stated above, the petition succeeds. The impugned communication dated 27th March 2007 of the respondent No.3 is hereby quashed and set aside. The respondent

No.2 is directed to register the application/complaint submitted by the petitioner as 'FIR' and to proceed further with the same in accordance with law and on its own merits. Rule is made absolute to the aforesaid extent.

[M.R. Shah, J.]

rmr.